

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

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DOC #:
DATE FILED: 7/26/13

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
- v. -)
)
POKERSTARS, et al.,)
)
Defendants;)
)
ALL RIGHT, TITLE AND INTEREST IN)
THE ASSETS OF POKERSTARS, et al.,)
)
Defendants-in-rem.)

**STIPULATION AND ORDER
OF SETTLEMENT IN REGARD
TO ROBB EVANS**

11 Civ. 2564 (KMW)

WHEREAS, on or about April 14, 2011, a verified complaint, 11 Civ. 2564 (LBS) (the "Complaint") was filed under seal in the United States District Court for the Southern District of New York seeking the forfeiture of certain property pursuant to Title 18, United States Code, Sections 1955(d), 981(a)(1)(A), and 981(a)(1)(C) ("Forfeiture Action");

WHEREAS, included in such property were all funds held on deposit in the following accounts:

Account numbered 12900584 held at Sunfirst Bank, St. George, Utah, formerly in the name of Sunfirst Bank ITF Powder Monkeys/Full Tilt, now in the name of Sunfirst Bank, and all funds traceable thereto ("Account 1");

Account numbered 129000576 on deposit at Sunfirst Bank, St. George, Utah, formerly in the name of Sunfirst Bank ITF Mastery Merchant/Pstars, now in the name of Sunfirst Bank, and all funds traceable thereto ("Account 2");

Account numbered 121015408 held at Sunfirst Bank, St. George, Utah, in the name of Triple Seven LP d/b/a Netwebfunds.com, and all funds traceable thereto ("Account 3");

Account numbered 121015390 held at Sunfirst Bank, St. George, Utah, in the name of Triple Seven LP d/b/a A WEB DEBIT, and all funds traceable thereto ("Account 4");

Account numbered 5510045221 held at Wells Fargo, N.A., in the name of Triple Seven L.P., and all funds traceable thereto ("Account 5");

Account numbered CY1211501001065983USDCACC002 held at FBME Bank LTD, Cyprus, in the name of Triple Seven Inc., and all funds traceable thereto ("Account 6");

Account numbered 7478010312 held at Wells Fargo, N.A., in the name of Kombi Capital, and all funds traceable thereto ("Account 7");

Account numbered 27351910081015 held at Societ  Generale Cyprus LTD, Cyprus, in the name of Golden Shores Properties Limited, and all funds traceable thereto ("Account 8");

(Accounts 1-8 collectively, the "Defendant Accounts"; the funds in, or traceable to, the Defendant Accounts, "the Defendant Funds"; Accounts 1-4 together, the "Sunfirst Accounts"; Account 5, "the Wells Fargo Triple Seven Account"; Account 6, the "Cyprus Triple Seven Account"; Account 7, the "Wells Fargo Kombi Capital Account"; and Account 8, the "Cyprus Golden Shores Account").

WHEREAS, the Federal Deposit and Insurance Commission (the "FDIC") currently maintains the funds that were held in the Sunfirst Accounts;

WHEREAS, the FDIC has represented that it maintains funds in the aggregate amount of \$13,624,455.64 that were held in the Sunfirst Accounts; with \$8,495,522.22 from Account 1, \$5,112,102.97 from Account 2, \$9,025.26 from Account 3, and \$7,805.19 from Account 4;

WHEREAS, beginning on May 17, 2011, and for thirty consecutive days thereafter, pursuant to Rule G (4) (a) of the Supplemental Rules for Certain Admiralty and Maritime Claims and Asset Forfeiture Actions, plaintiff United States of America posted notice of the Verified

Complaint against the defendants-in-rem, on www.forfeiture.gov, the government internet site, and proof of publication was filed with the Clerk of the Court on November 22, 2011;

WHEREAS, on or about October 5, 2011, Robb Evans of Robb Evans and Associates LLC (“Robb Evans” or “Claimant”), a receiver appointed by the United States District Court for the District of Nevada in the action Federal Trade Commission v. Jeremy Johnson, 2:10 Civ. 2203-MMD-GWF) (D. Nev. 2010) (the “FTC Action”), filed a verified claim for the Defendant Funds asserting an ownership in said property;

WHEREAS, the Claimant was tasked as receiver in the FTC Action to take possession of, and maintain the assets of, Jeremy Johnson and a number of corporate entities in order to assure that such assets are available for restitution to victims of Johnson’s alleged internet fraud scheme as set forth in the FTC Action;

WHEREAS, included within the scope of the Claimant’s receivership are all assets of Kombi Capital LP, Mastery Merchant, LLC, Powder Monkeys, LLC, Triple Seven LP/LLC, and Triple Seven, Inc. (collectively, the “Receivership Entities”);

WHEREAS, on or about September 21, 2011, a verified amended complaint (the “Amended Complaint”) in the Forfeiture Action was filed seeking the forfeiture of, inter alia, the Defendant Funds;

WHEREAS, on or about September 10, 2012, a verified second amended complaint (the “Second Amended Complaint”) in the Forfeiture Action was filed seeking the forfeiture of, inter alia, the Defendant Funds;

WHEREAS, the Claimant represents that, in his capacity as receiver in the FTC Action, he believes that he will have separately collected funds sufficient to cover costs and fees relating to the Claimant’s work as receiver and that most, if not all, funds collected from the Defendant

Accounts will therefore be utilized to provide restitution for victims of the internet fraud scheme alleged in the FTC Action and payment on allowed creditor claims, in connection with a claims allowance and distribution procedure to be administered by Claimant and/or a distribution procedure to be managed by the FTC;

WHEREAS, the Government and the Claimant have agreed to settle this matter; therefore

IT IS HEREBY STIPULATED, ORDERED AND AGREED, by and between Plaintiff United States of America (the "Government"), by its attorney Preet Bharara, United States Attorney, Assistant United States Attorneys, Sharon Cohen Levin, Michael D. Lockard, Jason H. Cowley, and Christine I. Magdo, of counsel, and the Claimant, by his counsel, McKenna Long & Aldridge LLP by Gary Caris, Esq., that:

1. The FDIC shall immediately transfer funds from the Sunfirst Accounts as follows:
 - (1) \$6,812,227.82 to a seized asset account operated by the United States Marshal Service, and
 - (2) \$6,812,227.82 to the Claimant Robb Evans.
2. Wells Fargo shall immediately transfer to a seized asset account operated by the U.S. Marshals all funds in its possession that are, or were, held on deposit in the Wells Fargo Triple Seven Account or the Wells Fargo Kombi Capital Account.
3. The Government is hereby authorized to seize and take possession of the funds held in the Cyprus Triple Seven Account and the Cyprus Golden Shores Account.
4. Upon receipt of such funds set forth in paragraphs 2 and 3, the Government shall transfer to the Claimant fifty percent of the total assets obtained from the Wells Fargo Triple Seven Account, the Cyprus Triple Seven Account, and the Wells Fargo Kombi Capital Account (together with the funds transferred by the FDIC to the Claimant pursuant to Paragraph 1, the "Claimant Funds").

5. The remaining funds obtained by the Government from the Defendant Accounts (the "Forfeited Funds") shall be forfeited to the United States for disposition according to law, pursuant to Title 18, United States Code, Section 981.

6. Upon a notification filed by the Claimant in the Forfeiture Action that an order has been obtained in the FTC Action which provides that the FTC is the prevailing party such that the Claimant and/or the FTC can undertake distribution to victims of the internet fraud scheme alleged in the FTC Action and to other creditors with allowed claims in the FTC Action, the Claimant shall have clear title to the Claimant Funds. In the event that a final and non-appealable order is issued in the FTC Action which provides that the FTC is not the prevailing party such that the Claimant and/or the FTC cannot undertake distribution to victims and other creditors in the FTC Action, the Claimant shall file a notification of such in the Forfeiture Action, and upon such notification, the Claimant Funds shall be transferred to a seized asset account maintained by the United States Marshall Service and shall be forfeited to the United States for disposition according to law, pursuant to Title 18, United States Code, Section 981. The Claimant shall not be required to return any interest generated from the Claimant Funds while in the possession of the Claimant.

7. The Claimant's claim to the funds in Cyprus Golden Shores Account is hereby dismissed with prejudice.

8. Upon the Claimant's receipt of Claimant Funds, the Claimant's claim for the Forfeited Funds shall be deemed to be dismissed with prejudice.

9. Upon the Claimant obtaining clear title to the Claimant Funds, the Claimant's claim in this action shall be deemed fully and finally satisfied.

10. The Claimant is hereby barred from asserting any claim against the United States or any of its agents and employees (including, without limitation, the Federal Bureau of Investigation (“FBI”) and the United States Attorney’s Office for the Southern District of New York (“USAO-SDNY”)) in connection with or arising out of the United States’ seizure, restraint, and/or constructive possession of the Defendant Funds, including, without limitation, any claim that the United States did not have probable cause to seize and/or forfeit the Defendant Funds (including the Forfeited Funds), that the Claimant is a prevailing party or that the Claimant is entitled to attorneys’ fees or any award of interest.

11. The Government is hereby barred from asserting any claim to any property, assets or funds presently in the actual possession of Claimant in connection with the FTC Action as of the date of the entry of the Stipulation and Order.

12. The Claimant hereby agrees that it shall not file any claim or petition for restoration or remission relative to the Forfeited Funds, or any action or motion seeking to collaterally attack the seizure, restraint, or forfeiture of the Forfeited Funds. Furthermore, the parties hereby waive all rights to appeal or to otherwise challenge or contest the validity of this Stipulation and Order of Settlement.

13. Each party shall bear its own costs and attorneys’ fees.

14. The signature pages of this Stipulation and Order may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Signature pages may be by fax or electronic transmission and such signatures shall be deemed as valid originals.

15. In the event that the Claimant learns that the amount that the FDIC currently holds relating to the Sunfirst Accounts (the “Actual Amount”) is less than the amount represented by

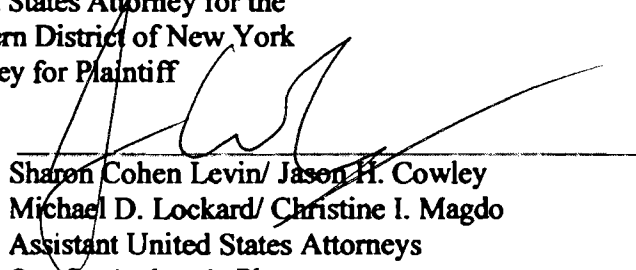
the FDIC and set forth in this Stipulation and Order (the "Represented Amount"), and the Represented Amount exceeds the Actual Amount by \$10,000 or more, the Claimant, within ten days of learning that the Represented Amount exceeds the Actual Amount by \$10,000 or more, shall file a notice (the "Discrepancy Notice") in the Forfeiture Action setting forth the Actual Amount. Within ten days of the filing of the Discrepancy Notice, either party may file a withdrawal notice stating that as a result of such discrepancy that party no longer wishes to enter into this agreement and the Stipulation and Order shall become null and void. If neither party timely files such withdrawal notice, the Stipulation and Order shall remain in full force and effect, and in such event the FDIC shall immediately transfer 50% of the Actual Amount to the United States Marshal Service and 50% of the Actual Amount to the Claimant Robb Evans. If the Actual Amount differs from the Represented Amount, but the Represented Amount does not exceed the Actual Amount by \$10,000 or more, then in such event the FDIC shall immediately transfer 50% of the Actual Amount to the United States Marshal Service and 50% of the Actual Amount to the Claimant Robb Evans.

16. After entry of the Stipulation and Order, the Claimant, who was appointed as a receiver in the FTC Action by the United States District Court for the District of Nevada (the "Nevada Court"), shall submit this Stipulation and Order for approval to the Nevada Court. In the event that the Nevada Court does not approve of the Claimant's entry into this Stipulation and Order, this Stipulation and Order shall become null and void and the Defendant Funds shall be returned to, and maintained in, a seized asset account maintained by the United States Marshal Service pending disposition of this matter.

AGREED AND CONSENTED TO:

PREET BHARARA
United States Attorney for the
Southern District of New York
Attorney for Plaintiff

By:


Sharon Cohen Levin/ Jason H. Cowley
Michael D. Lockard/ Christine I. Magdo
Assistant United States Attorneys
One St. Andrew's Plaza
New York, New York 10007
(212) 637-1060/2193/2479/2297

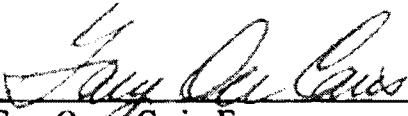
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DATE

[ADDITIONAL SIGNATURES ON FOLLOWING PAGE]

Robb Evans of Robb Evans and Associates LLC, Receiver

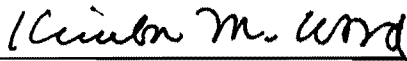
By: 
Robb Evans

July 1, 2013
DATE

By: 
Gary Owen Caris, Esq.
McKenna Long & Aldridge LLP
300 South Grand Avenue 14th Floor
Los Angeles, CA 90071
Tel: 213.243.6107
Attorney for Claimant

July 2, 2013
DATE

SO ORDERED:


THE HONORABLE KIMBA W. WOOD
UNITED STATES DISTRICT JUDGE

July 25, 2013
DATE